

LABOUR DEPARTMENT

The 24th March, 1983.

No. 9(1)82-6 Lab./2488.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Electronics Limited, Faridabad, NIT.

BEFORE SHRI M. C. BHARADWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 121/1982.

between

SHRI RAMA NAND WORKMAN AND THE MANAGEMENT OF M/S ELECTRONICS, LIMITED, FARIDABAD N.I.T.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Rama Nand and the management of M/s. Electronics Limited, Faridabad, by order No. ID/FD/58/82/18891, dated 20th April, 1982 to, this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

Whether the dismissal of Shri Rama Nand was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order dated 25th August, 1982:—

- (1) Whether the domestic enquiry is fair and proper?
- (2) Whether the dismissal of Shri Rama Nand was justified and in order? If not, to what relief is he entitled?

In evidence, the management examine Shri Jaswant Singh, Enquiry Officer, as MW-1 and

Shri Asha Nand, Assistant Personnel Officer as MW-2. The workman examined himself as MW-1 and Shri Rattan Singh, General Secretary as WW-2.

ISSUE NO. 1:

The enquiry officer who appeared as MW-1, deposed that he was appointed enquiry Officer to enquire into charge-sheet Ex. MW-1/1. Appointment order was Ex. MW-1/2. He held joint enquiry against Sarvshri Bhagwan Dass, Asha Nand, Rattan Singh and Rama Nand. The record of the enquiry is Ex. MW-1/3. He submitted his report Ex. MW-1/4 to the Factory Manager. In cross examination, he replied that Shri Rattan Singh, workman was associated by Shri Asha Nand and Bhagwan Dass in the enquiry against them. He admitted that the workman had requested to associate Union office bearer/legal advisor in the enquiry. He admitted that he was a practising advocate. He admitted that the management had raised objection against the representation of union office bearers. He further replied that he was legal advisor of the management or retainer basis for the last 10 years. He also admitted that he represented the management in the Labour Court/Industrial Tribunal and High Court. He admitted that he was aware of industrial relationship between the workmen and the management. The workman had given carbon copy of FIR Ex. MW-1/3 and had made request to postpone the enquiry till the decision of the criminal case. He admitted that he had knowledge that the workmen were prosecuted under Section 323/334, 506/527 IPC. He denied the suggestion that he acted as prosecutor rather as enquiry officer during the enquiry proceedings. He also denied the suggestion that charge-sheet and dismissal letter were also drafted by him. Shri Asha Nand MW-2 deposed that there was no officer of designation "administrative officer" in the factory. Shri S. K. Roy, Factory Manager looked after his duty. In cross examination, he replied that there was no resolution that the function of administrative officer will be done by the Factory Manager. He also had no knowledge of such order passed by the managing director. About 3-4 years back, Shri G. Goswami was administrative officer. Since then the post of administrative officer was vacant. He admitted that at the time of enquiry of the concerned workman, Shri G. Goswami was present. He also admitted that Production Manager Shri S. L.

Mishra had lodged FIR against the workmen. He also admitted that allegations in the FIR were same that of the charge-sheet. He was not aware if the workman had been acquitted in the criminal case. He also admitted that on some sittings he had done the recording of enquiry proceeding. He denied the suggestion that the management appointed its legal advisor as enquiry officer because the delinquent workman was general secretary of the union. He admitted that in some cases he himself was a enquiry officer and normally enquiries were held by the company officers.

WW-1 the workman concerned deposed that he was active worker of the union. He was illiterate. He never represented any other workman in enquiry. He had requested to associate some outsider in the enquiry but he was not allowed. There was none from the workers who could represent him and had knowledge of labour laws. He associated Shri Rattan Singh, as his representative but felt that he could have defended himself well if some outsider was allowed in the enquiry. Shri Rattan Singh was also a charge-sheeted workman, he further added. In cross examination, he replied that Shri Om Parkash who represented the workman in other enquiry, refused to assist him. WW-2 deposed that he was General Secretary of the Electronics Employees Union. Shri Bhagwan Dass was president of the union. Shri Rama Nand and Asha Nand were active members of the union, Before his case, the enquiries were conducted by the officers of the management. Shri Jaswant Singh Legal Advisor of the management conducted the enquiry against him and above named workers. He also conducted the case against them for the management. All the disciplinary matters such as charge-sheets suspension and dismissal letters were drafted by Shri Jaswant Singh. He had requested to associate an outsider as his representative in the enquiry against him. He himself had no knowledge and experience of conducting an enquiry. Therefore, he could not defend fully in the enquiry. Shri Jaswant Singh represented the management in the Standing Orders Amendment case before the Industrial Tribunal. They were acquitted by the Judicial Magistrate in the case, subject matter of which was the same as in the charge-sheet. Copies of statement of witnesses in the Criminal case were Ex. W-1, he further said. In cross-examination, he admitted that he had sought amendment of the Standing Orders with respect to associating

of office holder as a representative in the domestic enquiry.

The learned representative for the workman argued that the charge-sheet had violated the Standing Orders because the charge-sheet was given by the Factory Manager. He pointed out the order of holding the domestic enquiry was passed by the Factory Manager who had no power under Standing Orders. He cited 1956-I-LLJ-page 303 and 1964-I-LLJ-page 358. He further pointed out that no preliminary enquiry was held as provided in the standing orders. It was also pointed out that there was criminal case pending against the workman on the same charge. Therefore, the enquiry should have been stayed because there was prejudice caused to them in case they divulge their defence in the enquiry. He cited 1964-II-LLJ-page 113. It was pointed out that the enquiry officer had relied upon the F.I.R. in his report. He also contended that the enquiry conducted by the advocate was also improper and relied upon 1964-II-LLJ page 139. He further pointed out that the enquiry officer was associated with the charge-sheet and put his personal knowledge in the conduct of enquiry and as well in the finding. He cited 1963-II-LLJ page 396. It was further contended that no fair opportunity was given to the workman as they were not allowed proper representative.

On the other hand, the learned representative for the management argued that no prejudice was caused to the workman by issuing the charge-sheet by the Factory Manager. He pointed out that Administrative Officer was not defined in the Standing Orders. He further pointed out that preliminary enquiry was not a must in every case. It was satisfaction of the management for holding a preliminary or full enquiry. He further contended that there was different degree of proof in criminal trial and domestic enquiry. Therefore, there was no impact of the criminal case on the domestic enquiry. On his appointment as enquiry officer, he pointed out that there was no bar for appointment of legal advisor as an enquiry officer when an officer of the management could be appointed as an enquiry officer, there was no prejudice caused to the workman on his appointment.

I have gone through the documents placed on file. The enquiry was conducted against four

workmen, namely Shri Bhagwan Dass, Rattan Singh, Asha Nand and Rama Nand jointly into charge-sheet, dated 16th May, 1981. The charge-sheet was signed by Shri S. K. Roy. Choudhary, Factory Manager and the workman was placed under suspension by the same letter. According to the Standing Orders Ex. MW-1/5, the orders were applicable to all the staff of M/s. Electronics Limited, Faridabad. The procedure for dealing with case of major offences was given to clause 23 sub-clause (a) which provides:—

"If a major offence is alleged against a workman, the Administrative Officer issuing a charge-sheet will hold a preliminary enquiry. The workman so charged will be afforded a reasonable opportunity of explaining and defending his actions on a charge-sheet having been issued. Any such preliminary or subsequent enquiry may relate to alleged acts of several workmen where in the opinion of the Administrative Officer,, it is convenient to hold such an enquiry for several workmen together".

Sub-clause (c) deals with the entry of suspended workman in factory only with a special permission of the Administrative Officer. Sub-clause (i) states:—

"Nothing herein contained shall effect the right of the Company to terminate the service of the workman for any other good and sufficient cause, etc., etc."

Sub-clause (j) states "The company reserves to itself the right to suspend a workman accused in a court of law of any criminal offence involving moral turpitude". While dealing with punishment of major offence, clause 24(a) and (b) states:—

"(a) Workman shall be liable to be summarily dismissed if he has been found guilty of a major offence. A workman so dismissed shall not be entitled to any notice or pay in lieu, of notice and thereupon shall not be entitled to any benefits or privileges under these orders or any other benefits or privileges provided by the Company. (b) The Company may at its discretion and after taking into consideration all relevant

circumstances give the workman the following punishment in lieu of dismissal:—

- (1) Suspension without wages for a period not exceeding two weeks.
- (2) Reducing basic wages.
- (3) Demoting.
- (4) Withholding scale increments".

Clause 26 deals with complaint and remedy. In sub-clause (a) the complaint is to be made first to his immediate superior who will refer the complaint to his Manager,—vide sub-clause (b) and manager will pass on to Administrative Officer who will examine it,—vide sub-clause (c) and (d). The Administrative Officer will give his decision on the complaint as provided in sub-clause (d).

Manager is defined in clause 2(b). As Manager or Acting Manager notified to the Chief Inspector of Factories under Factories Act, 1948. This all goes to show that according to the Standing Orders Factory Manager and Administrative Officer are separate identities. It is into evidence of MW-2 that Shri G. Goswami was Administrative Officer. The post was vacant although Shri G. Goswami was present in the enquiry. I find that Shri G. Goswami was management's representative in the enquiry. It was settled law that Standing Orders are statutory terms and conditions of service between industrial' employers and its employee. This matter came for decision before their Lordships of Supreme Court in Hindustan Brown Boveri Limited and their workmen (1982-I-LLJ-page Limited and their workmen (1968-I-LLJ-page Supreme Court discussed the scheme of the Standing Orders and held that the powers entrusted to the Officer or Company were provided in express terms. It was held that:—

"In the absence of delegation, it is the company and not the works manager who can exercise the power of punishment under standing orders 23 and 27".

I find that nearly the same language was used in clause 23(b) for the company. Therefore, the charge-sheet for major offence for which

the workman was charge-sheeted, was to be issued by the Administrative Officer. According to the scheme of the Standing Orders, the manager was subordinate to the Administrative Officer as was clear from clause 26 of the Standing Orders. It leads to the conclusion that charge-sheet was incompetent.

As regards holding of preliminary enquiry, it was the subjective satisfaction of the Administrative Officer and it was not always necessary to hold preliminary enquiry. It depends upon the facts of each case. Therefore, this contention of the learned representative of the workman does not find favour with me. However it was the Administrative Officer to decide if a joint enquiry was to be held for several workmen together as provided in clause 23(a) but in the present case, it was ordered by the Factory Manager.

As regards the pending of criminal case, in the Court of Judicial Magistrate, I find from the enquiry record that case F.I.R. No. 13, dated 15th May, 1982 under section 323/324, 506, 427, 148 and 149 I.P.C. was pending against the four workmen against whom the present enquiry was held. In criminal case, the State was the prosecutor and not the management. It may be that some time prejudice may be caused to accused in disclosing his defence while facing a domestic enquiry which was held for the same charges. But it was not incumbent upon the management to postpone the enquiry till decision of the criminal case. I agree with the learned representative for the management that standard of proof in a domestic enquiry and criminal case was totally different. I am unable to accept the contention that the enquiry proceedings should have been stayed till the result of criminal case. It was the choice of the management either to proceed with the domestic enquiry or wait for the decision of the criminal trial.

As regards the appointment of enquiry officer, I find that the enquiry officer was practising advocate and he was retainer of the management for the last 10 years. He conducted the case of the management before Labour Court and Industrial Tribunal. He was also conducting the present case on behalf of the management. It may be that he might have some knowledge of the present case during the course of his duty but he denied them suggestion that he had knowledge of the present case. It was an admitted fact that he was not an eye

witness to alleged incident. He was cross-examined at length when appeared as MW-1. It was for practising advocate to see that he does not appear as witness in the case conducted by him or vice-versa because he had to face volley of questions of the opposite side and some time position is embarrassing but I do not find that there was any such prohibition for him to conduct the present case.

As regards the prejudice caused to workman by not allowing an outsider to assist them in the enquiry, I have discussed earlier that the Standing Orders were statutory terms and conditions of service and in the Standing Orders, there was no provision for associating an outsider in the domestic enquiry. The management could appoint an officer of the company or an outsider to be an enquiry officer in a particular case. Delinquent could not say that he should be replaced because he was an advocate. The learned representative for the workman sought help from Saran Motors Case (1964-II-LLJ-page 139), but I do not find any bar for a lawyer to conduct a domestic enquiry.

The argument of the learned representative for the workman that in the criminal trial where the subject matter of the charge was the same, prosecution examined Shri S. C. Mishra as PW-2, Shri M. L. Arora as P.W. 1, Shri S. L. Jaiswal as P.W. 4 and Shri Rajinder as P.W. 6 alongwith other witnesses. Although only these four witnesses appeared in the domestic enquiry in the criminal case, the accused were acquitted in the criminal case while they are found guilty in the domestic enquiry, has little force. I find from the judgment, dated 10th June, 1982, Ex. W-1, and statements of P.W.'s that they did not support the prosecution or there was material discrepancies in the statements. The only material point could be argued that in the criminal case statement was on oath which was not so in a domestic enquiry, but as discussed earlier that standard of proof was different in a trial.

As regards the enquiry report, the contention that the enquiry officer relied upon F.I.R. as piece of evidence as prima facie was discussed by him in para 54 of the report was correct but I find that he was not based his report solely upon the report. He had discussed the evidence recorded during the enquiry.

Last contention of the learned representative for the workman was that the termination was ordered by Factory Manager which was in contravention of the Certified Standing Orders. It was for the company to pass dismissal order or lesser punishment in its discretion as provided in clause 24 and 23(i) of the Standing Orders.

The result of my above discussion was that the charge-sheet and dismissal order was not passed by a competent authority. Therefore, edifice of the domestic enquiry which was based upon wrong foundation, i.e., incompetent charge-sheet falls to the ground and therefore, the dismissal of the workman was not in order. Therefore he was entitled to his reinstatement with full back wages.

The 4th March, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 288, dated 11th March, 1983.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1) 82-6 Lab./2489.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s Electronics Limited, Faridabad NIT.
BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD.

Reference No. 123/1982.

Between

SHRI RATTAN SINGH, WORKMAN AND THE
MANAGEMENT OF M/S ELECTRONICS
LIMITED, FARIDABAD N.I.T.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri

Rattan Singh and the management of M/s. Electronics Limited, Faridabad N.I. by order No. ID/FD/72/82/18905, dated 20th April, 1982, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947:—

- (1) Whether the dismissal of Shri Rattan Singh was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order dated 25th August, 1982:—

- (1) Whether the domestic enquiry is fair and proper?
- (2) Whether the dismissal of Shri Rattan Singh was justified and in order? If not, to what relief is he entitled?

In evidence, the management examined Shri Jaswant Singh, Enquiry Officer as MW-1 and Shri Asha Nand, Assistant Personnel Officer as MW-2. The workman examined himself as his own witness.

ISSUE NO. 1 :

The enquiry officer who appeared as MW-1 deposed that he was appointed enquiry officer to enquire into charge-sheet Ex. MW-1/1. Appointment order was Ex. MW1/2. He held joint enquiry against Sarvshri Bhagwan Dass, Asha Nand, Rattan Singh and Rama Nand. The record of the enquiry is Ex. MW-1/3. He submitted his report Ex. MW-1/4 to the Factory Manager. In cross-examination, he replied that Shri Rattan Singh, workman was associated by Shri Asha Nand and Bhagwan Dass in the enquiry against them. He admitted that the workman had requested to associate union office-bearer legal advisor in the enquiry. He admitted that he was a practising advocate. He admitted that the management had raised objection against the representation of union office-bearers. He further replied that he was legal advisor of the management on retainer basis for the last 10 years. He also admitted that he represented the management in the Labour Court/Industrial Tribunal and High Court. He admitted that he

was aware of industrial relationship between the workmen and the management. The workman had given carbon copy of F.I.R. Ex. MW-1/3 and had made request to postpone the enquiry till the decision of the criminal case. He admitted that he had knowledge that the workmen were prosecuted under Section 323/334, 506/527 I.P.C. He denied the suggestion that he acted as prosecutor rather than as enquiry officer during the enquiry proceedings. He also denied the suggestion that chargesheet and dismissal letter were also drafted by him. Shri Asha Nand MW-2 deposed that there was no officer of the designation "administrative officer" in the factory. Shri S. K. Roy, Factory Manager looked after his duty. In cross-examination, he replied that there was no resolution that the function of administrative officer will be done by the Factory Manager. He also had no knowledge of such order passed by the managing director. About 3-4 years back, Shri G. Goswami was administrative officer. Since then the post of administrative officer was vacant. He admitted that at the time of enquiry of the concerned workman, Shri G. Goswami was present. He also admitted that Production Manager Shri S. L. Mishra had lodged F.I.R. against the workmen. He also admitted that allegations in the F.I.R. were same that of the chargesheet. He was not aware if the workman had been acquitted in the criminal case. He also admitted that on some sittings he had done the recording of enquiry proceeding. He denied the suggestion that the management appointed its legal advisor as enquiry officer because the delinquent workman was General Secretary of the union. He admitted that in some cases he himself was an enquiry officer and normaly enquiries were held by the company officers.

The concerned workman deposed that he was General Secretary of the Electronics Employees Union. Shri Bhagwan Dass was president of the union. Shri Rama Nand and Asha Nand were active members of the union. Before his case, the enquiries were conducted by the officers of the management. ~~Shri Jaswant Singh~~ Legal Advisor of the management conducted the enquiry against him and above named workers. He was also conducted the case against them for the management. All the disciplinary matter such as chargesheets, suspension and dismissal letters were drafted by Shri Jaswant Singh. He had requested to associate an outsider as his representative in the enquiry against

him. He had no knowledge and experience of conducting an enquiry. Therefore, he could not defend fully in the enquiry. Shri Jaswant Singh represented the management in the Standing Orders Amendment case before the Industrial Tribunal. They were acquitted by the Judicial Magistrate in the case, subject matter of which was the same as in the chargesheet. Copies of statements of witnesses in the Criminal case were Ex. W-1. In cross-examination he admitted that he had sought amendment of the Standing orders with respect to associating of office holders as a representative in the domestic enquiry.

The learned representative for the workman argued that the management had violated the Standing Orders because the chargesheet was given by the Factory Manager. He pointed out the order of holding the domestic enquiry was passed by the Factory Manager who had no power under Standing Orders. He cited 1956-I-IIJ-page 303 and 1964-I-LLJ page 358. He further pointed out that no preliminary enquiry was held as provided in the Standing Orders. It was also pointed out that there was criminal case pending against the workman on the same charge. Therefore, the enquiry should have been stayed because there was prejudice caused to them in case they divulge their defence in the enquiry. He cited 1964-II-IIJ-page 113. It was pointed out that the enquiry officer had relied upon the F.I.R. in his report. He also contended that the enquiry conducted by the advocate was also improper and relied upon 1964-II-LLJ-page 139. He further pointed out that the enquiry officer was associated with the management and put his personnel knowledge in the conduct of enquiry and as well in the finding. He cited 1963-II-LLJ page 396. It was further contended that no fair opportunity was given to the workmen as they were not allowed proper representative.

On the other hand, the learned representative for the management argued that no prejudice was caused to the workman by issuing the chargesheet by the Factory Manager. He pointed out that Administrative Officer was not defined in the Standing Orders. He further pointed out that preliminary enquiry was not must in every case. It was satisfaction of the management for holding a preliminary or full enquiry. He further contended that there was different degree of proof in criminal trial and domestic enquiry.

Therefore, there was no impact of the criminal case on the domestic enquiry. On his appointment as enquiry officer, he pointed out that there was no bar for appointment of legal advisor as an enquiry officer when an officer of the management could be appointed as an enquiry officer. There was no prejudice caused to the workman on his appointment.

I have gone through the documents placed on file. The enquiry was conducted against four workmen namely Shri Bhagwan Dass, Rattan Singh, Asha Nand and Rama Nand jointly into chargesheet dated 16th May, 1981. The chargesheet was signed by Shri S. K. Roy Chaudhary, Factory Manager and the workman was placed under suspension by the same letter. According to the Standing Orders Ex. MW-1/5, the orders were applicable to all the staff of M/s Electronics Limited, Faridabad. The procedure for dealing with case of major offences was given in clause 23 sub-clause (a) which provides:—

"If a major offence is alleged against a workman, the Administrative Officer issuing a charge-sheet will hold a preliminary enquiry. The workman so charged will be afforded a reasonable opportunity of explaining and defending his actions on a charge-sheet having been issued. Any such preliminary or subsequent enquiry may relate to alleged acts of several workman wherein the opinion of the Administrative Officer, it is convenient to hold such an enquiry for several workmen together."

Sub-clause (e) deals with the entry of suspended workman in factory only with a special permission of the Administrative Officer. Sub-clause (i) states :—

"Nothing herein contained shall effect the right of the Company to terminate the service of the workman for any other good and sufficient cause etc., etc."

Sub-clause (j) states "The company reserves to itself the right to suspend a workman accused in a court of law of any criminal offences involving moral turpitude". While dealing with punish-

ment of major offence, clause 24(a) and (b) states :—

"(a) Workman shall be liable to be summarily dismissed if he has been found guilty of a major offence. A workman so dismissed shall not be entitled to any notice or pay in lieu, of notice and thereupon shall not be entitled to any benefits or privileges under these orders or any other benefits or privileges provided by the Company.

(b) The Company may at its discretion and after taking into consideration all relevant circumstances, give the workman the following punishment in lieu of dismissal :—

- (1) Suspension without wages for a period not exceeding two weeks.
- (2) Reducing basic wages.
- (3) Demoting.
- (4) Withholding scale increments."

Clause 26 deals with complaint and remedy. In sub-clause (a) the complaint is to be made first to his immediate superior who will refer the complaint to his Manager,—vide sub-clause (b) and manager will pass on to Administrative Officer who will examine it,—vide sub-clause (c) and (d). The administrative officer will give his decision on the complaint as provided in sub-clause (d).

Manager is defined in clause 2(b). As Manager or Acting Manager notified to the Chief Inspector of Factories under the Factories Act, 1948. This all goes to show that according to the Standing Orders, Factory Manager and Administrative Officer are separate identities. It is into evidence of MW-2 that Shri G. Goswami was Administrative Officer. The post was vacant although Shri G. Goswami was present in the enquiry. I find that Shri G. Goswami was management's representative in the enquiry. It was settled law that Standing Orders are statutory terms and conditions of service between industrial employers and its employees. This matter came for decision before their Lordships of Supreme Court in Hindustan Brown Boveri Limited and their workmen (1968-1-LLJ-page

571). In this case, their Lordships of the Supreme Court discussed the scheme of the Standing Orders and held that the powers entrusted to the officer or company were provided in express terms. It was held that :—

"In the absence of a delegation it is the company and not the works manager who can exercise the power of Punishment under standing orders 23 and 27".

I find that nearly the same language was used in clause 23(b) for the company. Therefore, the chargesheet for major offence for which the workman was chargesheeted, was to be issued by the Administrative Officer. According to the scheme of the Standing Orders, the Manager was subordinate to the Administrative Officer as was clear from clause 26 of the Standing Order. It leads me to the conclusion that chargesheet was incompetent.

As regards holding of preliminary enquiry, it was the subjective satisfaction of the Administrative Officer and it was not always necessary to hold preliminary enquiry. It depends upon the facts of each case. Therefore, this contention of the learned representative of the workman does not find favour with me. However, it was the Administrative Officer to decide if a joint enquiry was to be held for several workmen together as provided in clause 23(a) but in the present case, it was ordered by the Factory Manager.

As regards, the pending of criminal case in the Court of Judicial Magistrate, I find from the enquiry record that the case F.I.R. No. 13, dated 15th May, 1982 under Section 323/394, 506, 427, 148 and 149 I.P.C. was pending against the four workmen against whom the present enquiry was held. In criminal case, the State was the prosecutor and not the management. It may be that some time a prejudice may be caused to accused in disclosing his defence while facing a domestic enquiry which was held for the same charges. But it was not incumbent upon the management to postpone the enquiry till decision of the criminal case. I agree with the learned representative for the management that standard of proof in a domestic enquiry and criminal case was totally different. I am unable to accept the contention that the enquiry proceedings should have been stayed till the result of criminal

case. It was the choice of the management either to proceed with the domestic enquiry or wait for the decision of the criminal trial.

As regards the appointment of enquiry officer, I find that the enquiry officer was practising advocate and he was retainer of the management for the last 10 years. He conducted the case of the management before Labour Court and Industrial Tribunal. He was also conducting the present case on behalf of the management. It may be that he might have some knowledge of the present case during the course of his duty but he denied the suggestion that he had knowledge of the present case. It was an admitted fact that he was not an eye witness to alleged incident. He was cross-examined at length when appeared as MW-1. It was for practising advocate to see that he does not appear as witness in the case conducted by him or vice-versa because he has to face volley of question of the opposite side and some time position is embarrassing but I do not find that there was any such prohibition for him to conduct the present case.

As regards the prejudice caused to the workman by not allowing an outsider to assist them in the enquiry, I have discussed earlier that the Standing Orders were statutory terms and conditions of service and in the Standing Orders there was no provision for associating of outsider in the domestic enquiry. The management could appoint an officer of the company or an outsider to be an enquiry officer in a particular case. Delinquent could not say that he should be replaced because he was an advocate. The learned representative for the workman sought help from Saran Motors Case (1984-II-LLJ page 139) but I do not find any bar for a lawyer to conduct a domestic enquiry.

The argument of the learned representative for the workman that in the criminal trial where the subject matter of the charge was the same, prosecution examined Shri S. C. Mishra as PW-8, Shri M. L. Arora as P.W. 1, Shri S. L. Jaiswal as P.W. 4 and Shri Rajinder as P.W. 6 along with other witnesses. Although only these four witnesses appeared in the domestic enquiry and the criminal case. The accused were acquitted while they were found guilty in the domestic enquiry, has little force. I find from the judgement dated 10th June, 1982 Ex. W-1 and statements of PW's that they did not support the prosecution or

there was material discrepancies in the statements. The only material point could be argued that in the criminal case, statement was on oath which was not so in a domestic enquiry but as discussed earlier that standard of proof was different in a trial.

As regards the enquiry report, the contention that the enquiry officer relied upon F.I.R. as a piece of evidence as prima facie was discussed by him in para 54 of the report was correct but I find that he has not passed his report solely upon the report. He had discussed the evidence recorded during the enquiry.

Last contention of the learned representative for workman was that the termination was ordered by Factory Manager which was in contravention of the Certified Standing Orders. It was for the company to pass dismissal order or lesser punishment in its discretion as provided in clause 24 and 23(i) of the Standing Orders.

The result of my above discussion was that the chargesheet and dismissal order was not passed by a competent authority. Therefore, edifice of domestic enquiry which was based upon wrong foundation i.e. incompetent chargesheet falls to the ground and therefore the dismissal of the workman was not in order. Therefore, he was entitled to his reinstatement with full back wages.

The 4th March, 1983.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 289, dated 11th March, 1983.

Forwarded (four copies) to the Secretary to Govt., Haryana, Labour & Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947:—

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6 Lab./2491.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following

award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workman and the management of M/s. Electronics Limited, Faridabad, N.I.T.

BEFORE SHRI M. C. BHARDWAJ,
PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 124/82.

between

SHRI BHAGWAN DASS WORKMAN AND
THE MANAGEMENT OF M/S. ELECTRONICS LIMITED, FARIDABAD N.I.T.

AWARD

The Governor of Haryana referred the following dispute between the workman Shri Bhagwan Dass and the management of M/s. Electronics Limited, Faridabad N.I.T., by order No. ID/FD/65/82/18912, dated the 20th April, 1982, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section-10 of the Industrial Disputes Act, 1947:—

Whether the dismissal of Shri Bhagwan Dass was justified and in order? If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by my order dated 25th August, 1982:—

- (1) Whether the domestic enquiry is fair and proper?
- (2) Whether the dismissal of Shri Bhagwan Dass was justified and in order? If not, to what relief is he entitled?

In evidence, the management examined Shri Jaswant Singh Enquiry Officer as MW-1 and Shri Asha Nand, Assistant Personnel Officer as MW-2. The workman examined himself as WW-1 and Shri Rattan Singh, General Secretary as WW-2.

ISSUE NO. 1:

The enquiry officer who appeared as MW-1, deposed that he was appointed enquiry officer to

enquire into chargesheet Exhibit MW-1 and Exhibit MW-1/6. Appointment orders were Exhibit MW-1/2 and Exhibit MW-1/7. He held joint enquiry against Sarvshri Bhagwan Dass, Asha Nand, Rattan Singh and Rama Nand and second against Shri Bhagwan Dass and Asha Nand. The record of the enquiry is Exhibit MW-1/3 and Exhibit MW-1/8. He submitted his reports Exhibit MW-1/4 and Exhibit MW-1/9 to the Factory Manager. In cross examination, he replied that Shri Rattan Singh workman was associated by Shri Asha Nand and Bhagwan Dass in the enquiry against them. He admitted that the workman had requested to associate union office bearer/legal advisor in the enquiry. He admitted that he was a practising advocate. He admitted that the management had raised objection against the representation of union office bearers. He further replied that he was legal advisor of the management on retainer basis for the last 10 years. He also admitted that he represented the management in the Labour Court/Industrial Tribunal and High Court. He admitted that he was aware of industrial relationship between the workmen and the management. The workmen had given carbon copy of F.I.R. Exhibit MW-1/3 and had made request to postpone the enquiry till the decision of the criminal case. He admitted that he had knowledge that the workmen were prosecuted under Section 323/334, 506/527 I.P.C. He denied the suggestion that he acted as prosecutor rather than as enquiry officer during the enquiry proceedings. He also denied the suggestion that chargesheet and dismissal letter were also drafted by him. Shri Asha Nand MW-2 deposed that there was no officer of designation "administrative officer" in the factory. Shri S. K. Roy, Factory Manager looked after his duty. In cross examination, he replied that there was no resolution that the function of administrative officer will be done by the Factory Manager. He also had no knowledge of such order passed by the managing director. About 3-4 years back, Shri G. Goswami was administrative officer. Since then the post of administrative officer was vacant. He admitted that at the time of enquiry of the concerned workman, Shri Goswami was present. He also admitted that Production Manager Shri S. L. Mishra had lodged F.I.R. against the workmen. He also admitted that allegations in the F.I.R. were same that of the chargesheet. He was not aware if the workman had been acquitted in the criminal case. He also admitted that on some sittings he had done the recording of enquiry proceeding. He denied the suggestion that the

management appointed its legal advisor as enquiry officer because the delinquent workman was general secretary of the union. He admitted that in some cases he himself was an enquiry officer and normally enquiries were held by the company officers.

WW-1 workman concerned deposed that he was president of the Electronics Employees Union. He was also president of the union at the time of chargesheet. He had read up to 6th class. He had no knowledge for the enquiry. He had requested to associate some outsider in the enquiry, but he was not allowed. He associated Shri Rattan Singh General Secretary in the enquiry. He could not defend himself fully. In cross examination, he stated that there were 400 workers in the factory. Shri Om Parkash who used to sit in the enquiry for workers refused to help him. WW-2 deposed that he was General Secretary of the Electronics Employees Union. Shri Bhagwan Dass was president of the union. Shri Rama Nand and Asha Nand were active members of the union. Before his case, the enquiries were conducted by the officers of the management, while Shri Jaswant Singh Legal Advisor of the management conducted the enquiry against him and above named workers. He also conducted the case against them for the management. All the disciplinary matters such as chargesheets, suspension and dismissal letters were drafted by Shri Jaswant Singh. He had requested to associate an outsider as his representative in the enquiry against him. He, himself, had no knowledge and experience of conducting an enquiry. Therefore, he could not defend fully in the enquiry. Shri Jaswant Singh represented the management in the Standing Orders Amendment case before the Industrial Tribunal. They were acquitted by the Judicial Magistrate in the case, subject matter of which was the same as in the chargesheet. Copies of statement of witnesses in the Criminal case were Exhibit W-1. In cross examination, he admitted that he had sought amendment of the Standing Order with respect to associating of office holders as a representative in the domestic enquiry.

The learned representative for the workman argued that the management had violated the Standing Orders because the chargesheet was given by the Factory Manager. He pointed out the order of holding the domestic enquiry was passed by the Factory Manager who had no power under Standing Orders. He cited 1956-I-LLJ page 303 and 1964-I-LLJ page 358. He

further pointed out that no preliminary enquiry was held as provided in the standing orders. It was also pointed out that there was criminal case pending against the workman on the same charge. Therefore, the enquiry should have been stayed because there was prejudice caused to them in case they divulge their defence in the enquiry. He cited 1964-II-LLJ page 123. It was pointed out that the enquiry officer had relied upon the F.I.R. in his report. He also contended that the enquiry conducted by the advocate was also improper and relied upon 1964-II-LLJ page 139. He further pointed out that the enquiry officer was associated with the management and put his proposal knowledge in the conduct of enquiry and as well in the finding. He cited 1963-II-LLJ page 396. It was further contended that no fair opportunity was given to the workmen as they were not allowed proper representative.

On the other hand, the learned representative for the management argued that no prejudice was caused to the workman by issuing the chargesheet by the Factory Manager. He pointed out that Administrative Officer was not denied in the Standing Orders. He further pointed out that preliminary enquiry was not must in every case. It was satisfaction of the management for holding a preliminary or full enquiry. He further contended that there was different degree of proof in criminal trial and domestic enquiry. Therefore, there was no impact of the criminal case on the domestic enquiry. On his appointment as enquiry officer, he pointed out that there was no bar for appointment of legal advisor as an enquiry officer when an officer of the management could be appointed as an enquiry officer. There was no prejudice caused to the workman on his appointment.

I have gone through the documents placed on file. The enquiry was conducted against four workmen namely Shri Bhagwan Dass, Rattan Singh, Asha Nand and Rama Nand jointly into chargesheet dated 16th May, 1981 and against Bhagwan Dass and Asha Nand dated 14th May, 1981. The chargesheet was signed by Shri S. K. Roy Chaudhary Factory Manager and the workman was placed under suspension by the same letter. According to the Standing Orders Exhibit MW-1/5, the orders were applicable to all the staff of M/s. Electronics Limited, Faridabad. The procedure for dealing with case of major offences was given in clause 23 sub clause (a) which provides:—

"If a major offence is alleged against a workman, the Administrative Officer

issuing a chargesheet will hold a preliminary enquiry. The workman so charged will be afforded a reasonable opportunity of explaining and defending his action on a chargesheet having been issued. Any such preliminary or subsequent enquiry may relate to alleged acts of several workmen wherein the opinion of the Administrative Officer, it is convenient to hold such an enquiry for several workmen together."

Sub-clause (c) deals with the entry of suspended workman in factory only with a special permission of the Administrative Officer. Sub-clause (i) states:—

"Nothing herein contained shall effect the right of the Company to terminate the service of the workman for any other good and sufficient cause etc. etc."

Sub-clause (j) states "The company reserves to itself the right to suspend a workman accused in a court of law of any criminal offence involving moral turpitude". While dealing with punishment of major offence, clause 24(a) and (b) states:—

"(a) Workman shall be liable to the summarily dismissed if he has been found guilty of a major offence. A workman so dismissed shall not be entitled to any notice or pay in lieu, of notice and thereupon shall not be entitled to any benefits or privileges under these orders or any other benefits or privileges provided by the company.

(b) The company may at its discretion and after taking into consideration all relevant circumstances give the workman the following punishment in lieu of dismissal:—

(1) Suspension without wages for a period not exceeding two weeks.

(2) Reducing basic wages.

(3) Demoting.

(4) Withholding scale increments".

Clause 26 deals with complaint and remedy. In sub-clause (a) the complaint is to be made first to his immediate superior who will refer

the complaint to his Manager,—vide sub-clause (b) and manager will pass on to Administrative Officers who will examine it,—vide sub-clause (c) and (d). The Administrative Officer will give his decision on the complaint as provided in sub-clause (d).

Manager is defined in clause 2(b). As Manager or Acting Manager notified to the Chief Inspector of Factories under the Factories Act, 1948. This all goes to show that according to the Standing Orders, Factory Manager and Administrative Officer are separate identities. It is into evidence of MW-2 that Shri G. Goswami was Administrative Officer. The post was vacant although Shri G. Goswami was present in the enquiry. I find that Shri G. Goswami was management's representative in the enquiry. It was settled law that Standing Orders are statutory terms and conditions of service between industrial employers and its employees. This matter came for decision before their Lordships of Supreme Court in Hindustan Brown Boveri Limited and their workmen (1968-I-LLJ-Page 571). In this case, their Lordships of the Supreme Court discussed the scheme of the Standing Orders and held that the powers entrusted to the officer or company were provided in express terms. It was held that:—

"In the absence of a delegation it is the company and not the works manager who can exercise the power of punishment under standing orders 23 and 27".

I find that nearly the same language was used in clause 23(b) for the company. Therefore, the chargesheet for major offence for which the workman was chargesheeted, was to be issued by the Administrative Officer. According to the scheme of the Standing Orders, the Manager was subordinate to the Administrative Officer as was clear from clause 26 of the Standing Orders. It leads me to the conclusion that chargesheet was incompetent.

As regards holding of preliminary enquiry, it was the subjective satisfaction of the Administrative Officer and it was not always necessary to hold preliminary enquiry. It depends upon the facts of each case. Therefore, this contention of the learned representative of the workman does not find favour with me. However it was the Administrative Officer to

decide if a joint enquiry was to be held for several workmen together as provided in clause 23(a) but in the present case; it was ordered by the Factory Manager.

As regards the pending of criminal case in the Court of Judicial Magistrate, I find from the enquiry record that case F.I.R. No. 13 dated 15th May, 1982 under section 323/324, 506, 427, 148 and 149 I.P.C. was pending against the four workmen against whom the present enquiry was held. In criminal case, the State was the prosecutor and not the management. It may be that some time prejudice may be caused to accused in disclosing his defence while facing a domestic enquiry which was held for the same charges. But it was not incumbent upon the management to postpone the enquiry till decision of the criminal case. I agree with the learned representative for the management that standard of proof in a domestic enquiry and criminal case was totally different. I am unable to accept the contention that the enquiry proceedings should have been stayed till the result of criminal case. It was the choice of the management either to proceed with the domestic enquiry or wait for the decision of the criminal trial.

As regards the appointment of enquiry officer, I find that the enquiry officer was practising advocate and he was retainer of the management for the last 10 years. He conducted the case of the management before Labour Court and Industrial Tribunal. He was also conducting the present case on behalf of the management. It may be that he might have some knowledge of the present case during the course of his duty but he denied the suggestion that he had knowledge of the present case. It was an admitted fact that he was not an eye witness to alleged incident. He was cross-examined at length when appeared as MW-1. It was for practising advocate to see that he does not appear as witness in the case conducted by him or vice-a-versa because he had to face volley of question of the opposite side and some time position is embarrassing but I do not find that there was any such prohibition for him to conduct the present case.

As regards the prejudice caused to the workman by not allowing an outsider to assist them in the enquiry, I have discussed earlier that the Standing Orders were statutory terms and

condition of service and in the Standing Orders, there was no provision for associating an outsider in the domestic enquiry. The management could appoint an officer of the company or an outsider to be an enquiry officer in a particular case. Delinquent could not say that he should be replaced because he was an advocate. The learned representative for the workman sought help from Saran Motors Case (1964-IL-LLJ page 139) but I do not find any bar for a lawyer to conduct a domestic enquiry.

The argument of the learned representative for the workman that in the criminal trial where the subject-matter of the charge was the same, prosecution examined Shri S. C. Mishra as PW-2, Shri M. L. Arora as P.W. 1, Shri S. L. Jaiswal as P.W. 4 and Shri Rajinder as P.W. 6 along with other witnesses. Although only these four witnesses appeared in the domestic enquiry, in the criminal case, the accused were acquitted while they were found guilty in the domestic enquiry, has little force. I find from the judgement dated 10th June, 1982, Exhibit W-1 and Statements of P.W.'s that they did not support the prosecution or there was material discrepancies in the statements. The only material point could be argued that in the criminal case, statement was on oath which was not so in a domestic enquiry but as discussed earlier that standard of proof was different in a trial.

As regards the enquiry report MW 1/4, the contention that the enquiry officer relied upon F.I.R. as piece of evidence as prima facie was discussed by him in para 54 of the report was correct but I find that he was not based his report solely upon the report. He had discussed the evidence recorded during the enquiry.

Last contention of the learned representative for the workman was that the termination was ordered by Factory Manager which was in contravention of the Certified Standing Orders. It was for the company to pass dismissal order or lesser punishment in its discretion as provided in clauses 24 and 23(i) of the Standing Orders.

The result of my above discussion was that the chargesheet and dismissal order was not passed by a competent authority. Therefore, edifice of the domestic enquiry which was based upon wrong foundation i.e. incompetent chargesheet falls to the ground and there the

dismissal of the workman was not in order. Therefore, he was entitled to his reinstatement with full back wages.

The 4th March, 1983.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

Endorsement No. 291, dated 11th March, 1983.

Forwarded (four copies) to the Secretary to Government Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal,
Haryana, Faridabad.

No 9(1)82-6 Lab./2725.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of Act No. XIV of 1947, the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s S. J. Knitting and Finishing Mills, Pvt. Ltd., 13/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 296 of 1981

between

SHRI BHARAT LAL, WORKMAN AND
THE RESPONDENT OF M/S S. J
KNITTING AND FINISHING MILLS,
PVT. LTD., 13/7, MATHURA ROAD,
FARIDABAD

Shri M. K. Bhandari for the workman

Shri B. R. Grover for the respondent-
management.

AWARD

This reference No. 296 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/212/81/56354, dated 17th November, 1981, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Bharat Lal, workman and the respondent-management of M/s S. J. Knitting and Finishing Mills, P. Ltd., 13/7, Mathura Road, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Bharat Lal was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties on receiving this reference, order, the parties appeared and filed their pleading. The case of the workman according to demand notice and claim statement is that the workman joined the services of the respondent-management on 25th May, 1977 as Assistant Printer and drawing salary of Rs. 295 per month. The respondent removed the workman from the service on 10th September, 1980 and the workman raised the demand notice, dated 29th November, 1980 and on that demand notice a settlement arrived between the parties under section 12(3) of the Industrial Disputes Act, and in result of the settlement the workman was granted reinstatement on 1st January, 1981. After two months on 6th March, 1981, the workman was stopped at the gate of the factory and given the charge-sheet, dated 6th March, 1981. The satisfactory reply was filed but in spite of that reply, the domestic enquiry constituted and received the letter, dated 2nd May, 1981 appointing Shri B. R. Grover as enquiry officer to investigate the charges levelled against the workman. The enquiry officer did not fix any date to conduct the enquiry. Only the respondent informed about the enquiry. The workman attended enquiry on 30th May, 1981. The enquiry officer and the respondent-management wanted to get his signature on certain papers and the hoodlums patronised by the respondent-management, threatened the workman of dire consequences if he had not

done so. The workman escaped his life and reported the matter to the Labour Inspector, Sector 21, Faridabad, on 1st June, 1981. The workman was not informed about any date of enquiry after this episode. The workman received a letter, dated 24th June, 1981 for terminating his services from 24th June, 1981. The workman was never given any opportunity to explain his conduct. The termination was done in contravention of provisions of Industrial Disputes Act and in violation of principles of natural justice and has been done to suppress the legitimate trade union activities. So the workman is entitled for his re-instatement with full back wages and continuity of service.

The case of the respondent according to written statement is that the workman was appointed on 29th May, 1979 at the rate of Rs. 295 and he was removed from the service due to long absence. But by the intervention of Labour-Cum-Conciliation Officer, the workman was reinstated. The workman was charge-sheeted,—vide letter, dated 6th March, 1981 for certain act of grave and serious misconduct. The reply of the workman was not satisfactory so the domestic enquiry was constituted against him and Shri B. R. Grover was appointed as enquiry officer who hold the enquiry and every reasonable opportunity was given to the workman to defend his case. On 30th May, 1981, the workman signed the enquiry proceedings in presence of the enquiry officer he was asked to bring his co-workman to assist him in the enquiry for which the workman refused. After that the evidence of MW-1 was recorded and the workman cross-examined him.—The workman left the enquiry proceedings and even after the persuasion of the enquiry officer the workman failed to sit in the enquiry and the enquiry officer held the ex parte enquiry against the workman. The enquiry officer gave his findings holding the workman guilty of the charges and accordingly his services were terminated by the respondent-management. The enquiry was conducted in pursuance of the natural justice. The workman is gainfully employed and the reference is bad in law and may be rejected.

On the pleadings of the parties, following issues were framed:—

- (1) Whether the termination of service of the workman is proper, justified and in order? If not, to what relief is he entitled?
- (2) Whether a fair and proper domestic enquiry was held by the management? If so, to what effect?

Issue No. 2 was ordered to be treated as preliminary issue. After recording the evidence of both the parties on the preliminary issue, I heard the arguments and my findings of the preliminary issue is as under:—

ISSUE NO. 2:

The representative of the management argued on this issue that as stated by the enquiry officer in his statement as MW-1 he was appointed as enquiry officer,—vide letter, dated 14th March, 1981 which is Exhibit M-1 to enquire the charges of charge-sheet, Exhibit M-2 against the workman and he fixed the date for enquiry on 21st March, 1981 but the respondent received a letter, Exhibit M-3 objection on the appointment of the Enquiry Officer so the enquiry cannot held on 21st March, 1981. The respondent sent a letter for the enquiry, dated 22nd May, 1981, which is Exhibit M-4. The enquiry was fixed for 26th May, 1981, on that date the claimant came present in the enquiry and signed the proceedings, on 26th May, 1981, but because the enquiry officer had to go outside, he fixed dated as 30th May, 1981, in the enquiry proceedings. The enquiry was conducted on 30th May, 1981 which is Exhibit M-5 in which the workman participated and signed the proceedings and left the proceedings after recording one witness as MW-1 saying that he do not want to have the enquiry ere in the factory. In spite of explanation every thing to the workman by the enquiry officer, the workman left the enquiry proceedings. He has signed the enquiry proceedings at mark "A". The enquiry proceedings Exhibit M-6 contain-

ing four pages. After leaving the proceeding by the workman the proceedings conducted ex parte against the workman and finished the enquiry on the same day and the enquiry officer sent a letter Exhibit M-7 on the same date stating therein that ex parte enquiry against him has been finished after leaving the enquiry by the workman. The Enquiry Officer stated that he sent the findings of the enquiry proceedings which is Exhibit M-8 to the respondent and after considering the findings, the respondent issued Exhibit M-9 for terminating the services of the workman. The workman was informed through registered letter, Exhibit M-10, which received un-delivered. The enquiry officer further stated that Exhibit M-11 is the Printing Master report and the report of the Supervisor is Exhibit M-12 and the workman report is Exhibit M-23. The representative of the respondent argued that the proper opportunity was given to the workman as shows in the statement of enquiry officer and in spite of so many opportunities given to the workman he failed to participate in the enquiry and according to their standing order they removed the workman. He further argued that the workman received the letter, Exhibit M-7 after ex parte proceedings against him but he gave no reply of it. It shows that he has nothing to say about ex parte enquiry. So proper opportunity was given to the workman and the enquiry was fair. He further argued that as stated by the workman in his statement that he was beaten and threatened on 30th May, 1981 during the enquiry proceedings, was not proved anywhere as he has not made any complaint to any officer of the respondent or to the Police. If he had beaten he should have made the complaint about this beating but in absence of any complaint the allegation cannot be believed.

The representative of the workman argued on this issue that the claimant was appointed on 25th May, 1977 as Assistant Printer and worked without any interference and complaint up to 10th September, 1980 and removed from service on 10th September, 1980. The workman raised the demand notice on 29th November, 1980 and on that demand notice a

settlement was arrived at under section 12(3) of the Industrial Disputes Act, 1947 and the workman was re-instated on 1st January, 1981. The respondent has grauge against the workman and did not want to keep him on the roll of the factory. So he prepared a false allegations against the workman and gave the charge-sheet and stopped the workman on 6th March, 1981 and gave him a false and fabricated charge-sheet. He further argued as stated by the workman in his statement as WW-1 the respondent did not want to keep the claimant as they have terminated his services in the year 1980 and the workman raised the demand notice Exhibit W-1 and settlement was made as Exhibit W-2. He received the charge-sheet and replied the same,—vide Exhibit W-3. The respondent gave the letter Exhibit W-4 for the domestic enquiry. According to that letter he reached the factory for the enquiry on 16th May, 1981. The enquiry officer was not there. The workman gave a letter in this respect to the respondent but he refused to take that letter but after that he sent a registered letter Exhibit W-5 and on that letter the enquiry was fixed for 26th May, 1981. The workman raised the objection on the appointment of the enquiry officer as he was the retainer of the company. The objection of the workman was over ruled by the respondent and the workman attended the enquiry on 26th May, 1981 inspite of his objections were not fulfilled by the respondent and the enquiry officer. The enquiry officer fixed the date for enquiry for 30th May, 1981 and on that date the enquiry officer with other gundas sitting in the enquiry beaten the workman and threatened him and got signatures on the enquiry proceedings but he escaped from proceedings of the enquiry and made the complaint to the Labour Inspector in this respect which is Exhibit W-7 which was received by the Labour Inspector's office and signed the same on Exhibit W17. The representative of the workman argued that the enquiry officer has not given the opportunity to the workman. The workman wanted a co-workman to assist in the enquiry which was refused by the enquiry officer and he wrote his enquiry proceedings of his own way. He further argued

that the enquiry officer should not have done ex parte proceedings on the same day. He should have given another opportunity to participate in the enquiry. But as the enquiry officer was the person of the respondent and he has stated according to their advises so he proceeded ex parte against the workman on the same day and did not give any opportunity to the workman for further proceedings and the workman got no opportunity to give his defence without which no enquiry could be said to be fair and proper. The enquiry officer has given one sides picture and there is nothing in the enquiry and the enquiry officer did not give proper and fair opportunity to the workman. So the enquiry be vitiated. The enquiry should be held in the court to give proper opportunity to the workman.

After hearing the arguments of both the parties, and going through the file, I am of the view that the workman was not given reasonable opportunity to defend his case in the enquiry proceedings. The workman raised some objections and demanded some facilities from the enquiry officer which was not given to him and the enquiry officer has not given the opportunity to defend his case in the enquiry proceedings. So no fair and proper enquiry was held against the workman. In these circumstances, I vitiate the enquiry and the issue is decided in favour of the workman against the respondent.

After vitiating the enquiry I gave opportunity to both the parties to lead their evidence on merits. The parties gave there evidence in respect of the charges against the workman and the workman gave his defence. After recording the evidence the arguments was hear and my findings on the issue is as under:—

ISSUE NO. 1:

The representative of the respondent argued on this issue that as stated by Shri Anand Kumar Designer of the respondent as MW-2 on 1st March, 1981 he was on the night shift and the claimant was also in the night shift. I heard the

noise of the workman that Shri Bharat Lal has torned out the design and when he went at the spot he saw the design torned. Shri R. N. Sharda has come as MW-3 and stated that Exhibit M-2 the charge-sheet was given to the workman Shri Sant Kumar, Painter, has come as MW-4 who has stated that he was working in the Printing Section on 1st March, 1981 in the night shift. Shri Bharat Lal also working in the night shift. The design was of Super India which was torned out by the workman in his presence. He further argued that the persons who were present at the time of occurrence are not more in the service. So the persons who were examined in the enquiry left the respondent factory and the other persons who have seen the occurrence have proved in the court and they stated that design were torned out by the workman. The workman, torned out the screen which were very costly and valuable thing without any reason. So after the enquiry his services were terminated. The witnesses of the workman cannot be believed as all the witnesses produced by the workman are Ex-employees and they have deposed because they have enmity with the respondent company. So the termination was valid and there was justification in the termination.

The representative of the workman argued on this issue that the respondent has produced only one eye witness who has stated that the screen was torned out in his presence. The other three witnesses produced by the respondent have not stated that the screen was torned out in their presence. The persons produced in the court Shri Sant Kumar was present at the time of incident. The respondent has not shown by any document that he was employee at the time of this incident on 1st March, 1981 without which the person cannot be believed. The respondent has not shown any cause for torning out the designs by the claimant. The respondent witness MW-2 Shri Anand Kumar stated in the cross-examination that he does not know who has reported this matter to the respondent. Witness is a designer and supervisor of the design

and painting department. He must know the fact of the case when he has come in the court. He has simply stated that he heard the noise of the workmen that the screen has been torned position and when he went there, the screen was torned out he saw the screen torned. This does not show that the workman has torned it. The question is why the workman has torned out the screen. For that the respondent gave no reply that what was the enmity to torned out the design. Without any enmity no body harm the company's property. The workman has stated that he is working from the last 4½ years and there is no such allegation against the workman. The claimant has specifically denied the incident of torning the design and it is all done by the respondent to terminate the services of the workman because he was the president of the Union of the factory and he used to raise the demand of the workers. He was previously removed by the respondent, on which he gave the demand notice which is Exhibit W-1 and on that demand notice the respondent took the workman on duty on a settlement which Exhibit W-2. He sent a letter, Exhibit W-4 for stopping at the gate and gave the demand notice Exhibit W-3. He was on duty on 1st March, 1981 in Khata No. 1 up stairs and the workman who has come as his witness were working with him. The case of the workman is supported by Shri Bir Singh WW-2 who has stated that he was dismissed in July, 1981 and he was working as jobber in the factory and this workman was working with him on the day of alleged incident. There was no incident of torning out the screen. Shri Radhey Sham. ex-employee has come as WW-1, who has stated that he was working with the claimant on the alleged date of incident and there was no such happening in Khata No. 1, where they were working it is false case to terminate the services of the workman. He further argued that the respondent's previous action shows that the workman was terminated without any justification. The enquiry was not conducted properly and the learned court has vitiated the enquiry on the very ground. The respondent has not produced the witnesses who were examined

in the enquiry and new persons were produced in the court to depose that the workman has turned out the screen which is false allegation and not proved by any way. The respondent should have reported this matter to the police which was not done by the respondent there is no such record with the respondent to prove that the workman has done mischief with the respondent company without which it cannot be said that the workman did so and that is for without any reason. So the respondent has failed to prove the case against the workman and there is no justification in terminating the services of the workman.

After hearing the arguments of both the parties, and going through the file, I am of the view that the arguments put forward by the workman has some force and the respondent witnesses can not be believed. The respondent should have produced the witnesses who were examined in the enquiry which the respondent has failed. There is no documentary proof of the respondent to show that the workman turned out the screen of the company. The respondent should have reported this matter to the Police and there should be action against the workman what mischief he has done with the property of the respondent. The respondent has not alleged anything against the workman to show that why he was annoyed to do such thing. No one do any thing without any cause of reason and it shows that he has done without any reason

cannot be believed. The witnesses of the workman have stated categorically that they were working with the claimant on the day of alleged happening and there was no such thing. The previous action of the respondent also prove this fact. The respondent has not produced any previous record of the workman to show that the workman was habitual offender of doing such things. So the termination of the workman was not justified and in order and the workman is entitled for his reinstatement, continuity of service and full back wages.

This be read in answer to the reference.

The 8th March, 1983.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 535, dated 21st March, 1983.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-6Lab/2266.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 of (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Snowtemp Engineering Co. Ltd., Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER, LABOUR COURT
HARYANA, FARIDABAD

Reference No. 203 of 1982
between

SHRI JAI PARKASH. WORKMAN AND THE RESPONDENT MANAGEMENT OF
M/S SNOWTEMP ENGINEERING COMPANY LTD., MATHURA ROAD, FARIDABAD.

Present :—

Shri M. K. Bhandari, for the Workman.

Shri S. L. Gupta, for the respondent-management.

AWARD

This reference No. 203 of 1982 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/88/82/33928, dated 21st July, 1982, under section 10(1)(c) of the Industrial Disputes Act, 1947, existing between Shri Jai Parkash, workman and the respondent management of M/s Snowtemp Engineering Company Ltd., Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Jai Parkash was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties, on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to his demand notice is that he joined the service of the respondent on 20th January, 1978 as GRINDERMAN on the salary of Rs 693 per month. He was suspended on 17th April, 1981 without any reason and terminated on 17th February, 1982 without completing the enquiry. He was terminated because he was an active member of the union and there was a general demand notice raised by the union which was pending and due to these, they terminated the services of the workman. So he is entitled for his reinstatement, continuity of service and back wages.

The case of the respondent according to written statement is that the claimant was dismissed for having committed grave and serious acts of misconduct after holding a fair and proper enquiry. The claimant was appointed on 20th January, 1978 as Grinder Operator at a salary of Rs 693 p. m. The claimant was charged of grave and serious act of misconduct,—vide charge-sheet dated 22nd April, 1981. The charges were hooting and shouting in the workshop during working hours, threatening the Security Personnels, forcibly entering in the staff canteen and slapping the watchmen on duty. There was another charge-sheet dated 29th September, 1981 in which the charges were that the claimant along with him associates Sarvshri Mangroo Parshad, Vidhya Parshad Nafis Ahd., Mohd. Abid assaulted Shri Madan Singh, Ujjeen Singh, Ram Singh and Sajan Singh on the way while they were going home after finishing their work. In this scuffle Mr. Sajan Singh lost his only eye by the hit of lathies of this workman. The other workmen received serious injuries on their heads, nose, and hands resulting fractures. The claimant tendered his explanation to both the charge-sheets on which domestic enquiry was ordered. The enquiry was conducted by an independent outside person. The workman fully participated in the enquiry along with representative, who was the President of the Union. Both of them fully cross examined the witnesses of the Management and also lead his own defence witnesses. Each page of the enquiry was signed by the claimant and his representative proving beyond doubt that he participated in the enquiry from beginning to end. The copies of the enquiry proceedings were given to the workman after every day ending the proceedings. The enquiry Officer found the workmen guilty of the charges which was considered by the respondent management. His demands and objections were fully met out and given all facilities in the enquiry and after considering the findings of the enquiry officer and the past record of the workman he was dismissed from the service on 17th February, 1982. So the reference may be answered in their favour.

On the pleadings of the parties, the following issues were framed :—

1. Whether the domestic enquiry conducted by the management is proper and fair? If so, to what effect?
2. Whether the termination of services of the workmen is proper, justified and in order? If not, to what relief is he entitled?

My findings on the issues is as under :—

Issue No. 1.—

The representative of the respondent argued on this issue that as stated by Shri S. L. Gupta, Enquiry Officer as MW-1, the charge sheet Ex. M-1 and M-2 were given to the workman and he replied the same which are Ex. M-3 and M-4. The respondent appointed the enquiry officer,—vide Ex. M-5 and M-6 and the enquiry proceedings are Ex. M-7 containing page 1 to 17. The workman participated from the beginning to end with his representative and cross examined the witnesses of the respondent management. He was given full opportunity to bring his representative to assist him in the enquiry. The President of the Union was allowed to sit in the enquiry as representative of the workman. The workman was provided the copies of the proceedings on every day. The workman and his representative signed all pages of the enquiry proceedings. He was given opportunity to lead his defence witnesses the workman was given the full opportunity in the enquiry proceedings. On the conclusion of the enquiry he gave his findings which is Ex. M-8 in which the workman was found guilty. The enquiry report was based on the documents and evidence produced by the parties which are Ex. M-9 to M-29. He further argued that Shri R. S. Chohan Personal Officer has appeared as MW-2 who has stated that he put up the file of the workman before the Director of the respondent, who passed the order Ex. M-30. The respondent

considered the charge-sheet, reply, findings of the enquiry officer and past record of the workman and after considering all the documents they decided to dismiss the workman. The order of dismissal is Ex. M-31. He further argued that the workman has not filed the claim statement in the case and he has treated the demand notice as his claim statement and in the demand notice he has not stated anywhere that the enquiry was not fair and proper in any way. Without any objection it is presumed that there was no objection of the workman about the enquiry officer and enquiry proceedings. The workman has admitted in his statement that he received all facilities in the enquiry and all documents before starting of the enquiry. He has also stated that he received the copies of the Certified Standing Orders before starting of the enquiry. He has stated that he demanded Shri Mangroo Ram as his representative but Shri Mangroo Ram came in the witness box as WW-2 who has also stated that he was not allowed to participate in the enquiry as a representative of the workman as he desired. In the cross examination the workman has admitted that Shri Mangroo Ram allowed to sit in the enquiry and asked to participate in the enquiry, but Shri Mangroo Ram stated if the respondent gave him in writing then he can sit which was not possible for the respondent and the workman was allowed to bring his representative who was President of the union of the factory, who had signed all proceedings and cross examined the respondent witnesses on behalf of the workman. So the enquiry conducted by the respondent was proper and fair.

The representative of the workman argued on this issue that as stated by the workman as WW-1 that he was charge-sheeted and there were two charge-sheets against him. He replied the charge sheets and he produced Ex. W-2 to W-23 the letters which he received from the respondent and the letters which were sent for demanding certain facilities. The workman had demanded Shri Sushil Kumar or Ram Kishan as representative which were not allowed by the respondent and he has not demanded Shri Dilip Singh as representative. He demanded Shri Mangroo Parshad as representative which was not allowed to represent him. He further stated that in the enquiry proceedings, the recording of statement was correct but the recording on page five is not correct because he demanded Shri Mangroo Ram to represent whereas it is wrongly written that Shri Mangroo Ram is not interested to participate in the enquiry as his representative. Shri Mangroo Ram was called in the enquiry room and was not allowed to sit as representative so he did not sign the pages 5 to 11 in protest. He further argued that the charge-sheets of the workman were false and fabricated and there was no such incident and the respondent did not want to keep the workman on duty as he was an active member of the union and the enquiry was not fair and proper.

After hearing the arguments of both the parties, and going through the file, I am of the view that the workman has failed to prove that the enquiry was not proper and fair. The workman himself has admitted in the cross-examination that he participated in the enquiry from beginning to end. He received all documents which are required in the enquiry before the enquiry Officer. He has also admitted that he cross examined the witnesses of the respondent and gave his defence witnesses. When there is no objection raised by the claimant in his demand notice and in his statement, it cannot be held that the enquiry was not fair and proper. So the issue is decided in favour of the respondent and against the workman.

Issue No. II.—

After deciding Issue No. I in favour of the respondent and keeping in view the charge-sheet of the workman which were very serious and grave. Such workman cannot be tolerated in the establishment. The respondent has proved this fact about the second charge-sheet of fracture and injuries and they have taken the only eye of Shri Sujan Singh which is proved by FIR dated 17th June, 1981. So the charges against the workmen are proved without any doubt and such persons cannot be tolerated to disturb the peace of the industry and the respondent has rightly terminated the services of the workman. So the workman is not entitled to any relief.

This be read in answer to this reference.

Dated : The 2nd March, 1983

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Encl. No. 467, dated the 10th March, 1983.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

ASHOK PAHWA,

Commissioner and Secretary to Government, Haryana,
Labour and Employment Department.